

REMARKS

Applicants note the Examiners' expression of patentability for claims 48-67 as free of the prior art. The previously pending claims were amended with the Examiner's remarks in mind and now comprise those identified as allowable. The current application is a divisional of the 09/333,213 application, now issued as U.S. Patent No. 6,548,653 ("the '653 patent").

Claims 48-67 are currently pending. Claims 1-26, 46-47 and 68 are cancelled herein. No new claims are added herein. No new matter is added herein. Early and favorable review of the pending claims, and formal allowance is earnestly sought.

Applicants believe that the amendments which have been made in response to the Examiner's most recent comments in her Final Rejection of the pending claims, along with the nature of this response have put the remaining claims in condition for allowance. It is therefore specifically and respectfully requested that the Examiner enter and allow the claims as amended herein. In the interests of preserving term for any patent that may be issued on these claims as amended Applicants would like to note the filing of a Notice of Appeal herewith.

AMENDMENTS AFTER FINAL REJECTION

This response to the Examiners Final Rejection includes within it amendments to the claims. Amendments such as these can be included within a response to such a Final Rejection if such amendments are made for good and sufficient reasons, as laid out by CFR § 1.116. Justifications for such amendments include: 1) the Applicant's attempt to answer new issues or rejections raised by the Examiner; 2) the amendments reduce the issues to be considered in an appeal; and/or 3) the amendments leave the application in better condition for allowance.

In this instance all possible efforts have been put forward to remove all of the Examiners' rejections to the remaining claims. The pending claims, as amended and provided by Applicant herein, are thus intended to be both part of a fully responsive reply to the Examiner's remaining rejections and fully grounded in the teachings of the specification. MPEP §§ 608.01; 714.

The Applicant believes that the amendments which have been made, along with the nature of this response serve to put all the remaining claims in condition for allowance.

Given the above, it is specifically and respectfully requested that the Examiner allow the amendments after final, made herein.

Objections

Applicants note the withdrawal of several objections to the pending claims in the latest Office Action (May 17, 2005). Specifically noted are the removal of objections relative to the Specification, SEQ. ID numbers, Sequence Listings and Drawings. Applicants thank the Examiner.

Rejections

Double Patenting; § 35 USC 112, second paragraph; and, § 35 USC 103(a).

The Applicants thank the Examiner for his continued examination on the merits and the movement toward allowability of some or all of the pending claims that the ongoing examination represents. The above rejections have been mooted through appropriate amendment of the claims. The remaining claims were not cited as rejected under the above provisions.

As regards a double patenting rejection it should be noted that the filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). In this sense the filing of a terminal disclaimer relative to patent application Serial Number 10/768,873 simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.

Thus, the Terminal Disclaimer filed by Applicant herewith makes plain the common ownership of the cited patent applications and effectively makes the current pending claims free of the prior art and ready for allowance. MPEP § 1504.06; MPEP § 804.02

Acknowledgement of Allowability

The claims, as amended, are now believed to comply with the suggestions of the Examiner and be free from any cited prior art. Those claims canceled can be pursued in a separate filing without prejudice. Applicants respectfully submit that the pending claims of this application are in condition for allowance, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested.


If the Examiner disagrees with any of the remarks herein, or believes for any other reason that direct contact with Applicant's attorney would advance the prosecution of the case to finality, the Examiner is invited to telephone the undersigned at the number given below. Consideration of this Amendment is respectfully requested.

The Commissioner is authorized to charge any fee which may now or hereafter be due for this divisional application to GTC Biotherapeutics' Deposit Account No. 502092.

Early and favorable action is earnestly solicited.

Respectfully Submitted,

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